NG KWOK WENG & ANOR v. PENDAFTAR HAKMILIK TANAH WILAYAH PERSEKUTUAN KUALA LUMPUR & ORS

HIGH COURT MALAYA, KUALA LUMPUR
AHMAD SHAHRIR MOHD SALLEH J
[CIVIL SUIT NO: 21NCVC-55-07-2013]
28 APRIL 2023

Abstract – *It is well-established that the party seeking damages must demonstrate both the fact and the quantum of damages. If specific and accurate evidence is available, the party seeking damages must present it to establish the extent of the actual loss. This means that the most reliable evidence must be presented. The evidence presented must be clear and credible to accurately measure the loss with an acceptable degree of correctness and certainty.*

DAMAGES: *Assessment – Quantum of – Fraudulent sale of property – Claim for loss of enjoyment and usage – Computation to determine losses – Claim for restoration of property – Amount required to restore property to habitable state – Claim for outstanding utility charges, valuation fees and legal fees – Whether indefensible – Claim for losses suffered as result of negligence and redemption sum – Burden of proof*

This was an assessment of damages against the first and second defendants arising out of the decision of the High Court in allowing the plaintiffs' claim and as varied by the Court of Appeal. The plaintiffs and the eighth defendant were beneficiaries entitled to receive benefits from the estate of one Ng Cheong Choy, who had passed away. This entitlement arose from the last will and testament of the deceased. After the death of the deceased, the eighth defendant was appointed the sole executor and trustee of the estate. Subsequently, the grant of probate was issued to the eighth defendant. The deceased owned the 'Mesui property' in Kuala Lumpur, measuring 383.956 square metres and this property was part of the deceased's estate. The basis of the plaintiff's claim was fraud. The third defendant committed fraud resulting in the sale of the Mesui property to the sixth defendant. The sixth defendant obtained the transfer and then used the property as collateral to secure financing from the seventh defendant. Upon discovery of the fraudulent sale of the Mesui property, the plaintiffs took legal action against the defendants. The High Court gave judgment in favour of the plaintiffs and made the following orders (i) that the Mesui property formed part of the estate of the deceased and that the plaintiffs and the eighth defendant were entitled pursuant to the will; (ii) that the duplicate issue document of title of the Mesui property which was in possession of the sixth or seventh defendant was null and void and was not the original document of title for the Mesui property; (iii) that the first defendant rectified all documents and records to

A show that the Mesui property was restored under the name of the deceased; (iv) that the sixth defendant delivers vacant possession of the Mesui property to the plaintiffs; and (v) that damages be assessed against the first and second defendants in relation to the cost and expenditure incurred by the sixth and seventh defendants. The sixth defendant was not satisfied with the decision B of the High Court and appealed to the Court of Appeal. The plaintiffs also filed a cross-appeal because they were not satisfied with the decision. The basis for their cross appeal was (i) that the High Court should have allowed the plaintiff to recover all the rentals received by the sixth defendant; (ii) that the sixth defendant was not a *bona fide* purchaser; and (iii) that the value of C the Mesui property should have been assessed at the date of judgment rather than the date of acquisition. The Court of Appeal dismissed the sixth defendant's appeal. However, the plaintiff's cross-appeal was partially allowed which resulted in certain parts of the High Court's order being varied and set aside as follows (i) the order of the High Court that limited the assessment of damages to the actual expenses and costs incurred by the sixth D and seventh defendants during the acquisition of the Mesui property from the third defendant including the purchase price and related incidental expenses had been set aside; and (ii) the order of the High Court was varied such that assessment of damages against the first and second defendants shall encompass all damages suffered by the sixth defendant, the plaintiffs and the E seventh defendant.

Held (ordering accordingly):

(1) Since it was the plaintiffs' pleaded case that they were claiming for the sixth defendant to account for all the profits made in the occupation of F the property and the plaintiffs' claim was allowed on that score, damages should accordingly be assessed on restitutionary basis premised on the user principle. The measure of damages which the plaintiffs should be entitled to must be gauged based on the gains in rental payments received by the sixth defendant less any expenses incurred in the same G regard as disgorgement of profits. Four months following the decision of the High Court, the plaintiffs and the sixth defendant agreed to a consent order. As per the consent order, the director of the sixth defendant undertook to pay to the plaintiffs all rental income collected between the date of the decision of the High Court and the conclusion of the month of October 2016 as well as any subsequent rental proceeds until the H Court of Appeal decision. The rental payments collected for the property were paid to the sixth defendant's solicitors as stakeholders. The total rental payments collected and paid to the said solicitors pursuant to the consent order amounted to RM571,379.25 instead of RM491,379.25 as claimed by the plaintiffs. After considering the I amount already paid to the sixth defendant's solicitors, the total sum of rental proceeds between the year 2016 to 2019 and the total expenses

including taxes, the balance amount of rental proceeds which was payable by the sixth defendant to the plaintiffs was assessed at RM236,147.80. As for the plaintiffs' claims for reasonable rental, these claims were not founded on the proceeds in rental obtained by the sixth defendant during those periods nor did the plaintiffs adduce any evidence to support these claims in rental proceeds. On the contrary, the plaintiffs had clearly stated that these rental claims were determined based on the prevailing rate of reasonable rent for other rental agreements. Given the circumstances, this court was constrained not to allow these claims. (paras 28-35)

(2) As for the restoration of the Mesui property, the plaintiffs claimed for the sum of RM65,100 as the costs to restore it to a tenantable condition. The appropriate compensation for the claims would be in the amount required to restore the property to a habitable state. The quotation could be accepted as *prima facie* evidence of the estimated costs to be borne by the plaintiffs which was RM65,100. Consequently, this court allowed damages in the sum of RM65,100 to the plaintiffs against the first and second defendants to cover the expenses of restoring the property to a tenantable condition. (paras 36 & 39)

(3) The plaintiffs claimed for the sum of RM90,761.99 being the outstanding electricity charges levied by Tenaga Nasional Berhad ('TNB') in relation to the property. The TNB bills exhibited by the plaintiffs served as evidence that these charges were accumulated during the period in which the sixth defendant occupied the property. This claim for unpaid utility charges was intrinsically linked to the sixth defendant's utilisation of the property and its receipt of rental income from it. The outstanding utility charge were not deducted from the rental proceeds and therefore should be the responsibility of the sixth defendant. Consequently, this court allowed the plaintiff's claim for damages against the sixth defendant for the total amount of RM90,761.99. (paras 40 & 41)

(4) The plaintiff claimed for the sum of RM16,000 as valuation fees on the property. However, a part payment of RM9,000 was specified as having been made for the tax invoice through a cheque possibly as a prepayment. However, at the time of the assessment which was nearly seven years later, there was no evidence to confirm that the plaintiffs had paid the remaining amount that was specified in the tax invoice. Given the absence of evidence indicating that the plaintiffs paid the balance sum of the tax invoice, this court was inclined to allow the plaintiffs' claim against the sixth defendant for the amount of RM9,000 for the valuation fees. (paras 42 & 43)

(5) The plaintiffs claimed that they had incurred legal fees amounting to RM962,539.06 in seeking legal redress on behalf of the estate against the defendants pertaining to fraud in the sale and negligence in the transfer of the Mesui property. There was a total of ten professional bills exhibited for the said total amount out of which six of them were pro forma invoices. Out of the total sum, the plaintiffs were able to show payment of three bills amounting to RM144,749.60. In the circumstances, this court was inclined to allow the plaintiffs the total sum of RM144,749.60 as damages against the first and second defendants being the legal fees incurred arising out of the negligence of the first and second defendants. (paras 44-46)

(6) The sixth defendant claimed damages against the first and second defendants for all losses suffered as a result of their negligence. Failure of the first and second defendants to contradict the positive assertions made would be treated as an admission of the facts so asserted. The sixth defendant had provided sufficient evidence to prove its losses and this court awarded certain damages to the sixth defendant. Even though the first and second defendants did not refute the quantum of damages claimed by the sixth defendant, the burden of proving the losses incurred still lay on the sixth defendant. Regarding the sixth defendant's claim for damages totalling RM255,163 as the total cost incurred for repairing and improving the property after acquiring it, it was the finding of this court that only the sum of RM82,830 was shown to have been paid. As such, this court awarded the sixth defendant the sum of RM82,830 under this head of damages. (paras 47-50)

(7) After inspecting the property and investigating the relevant information, the valuers concluded that the fair market value of the property was RM11,200,000 on the basis of 'willing buyer and willing seller' in an arm's length transaction. The valuers employed the cost and comparison method by considering recent transactions to determine the market value of the property. The valuers made adjustments for variations in factors like location, time element, land size, market condition and other elements that could have an impact on the property's value. There was no rebuttal report by the first and second defendants. In the present assessment, it was the finding of this court that the valuation report was not obviously indefensible. In fact, the valuer's conclusion was amply supported by the basic facts. In the circumstances, this court awarded the sixth defendant against the first and second defendants, the sum of RM11,200,000 representing the market value of the property as at the date of the High Court's decision rendering the sixth defendant's title to the property as defeasible. (paras 52-56)

(8) The damages claimed by the seventh defendant was for the outstanding amount of the financing it provided to the sixth defendant for the purchase of the Mesui property. The seventh defendant claimed damages for a total sum of RM1,903,916 and this amount would continue to accrue interest at the rate of 2.10% per annum below the BLR until the full amount was paid. The first and second defendants did not refute the quantum claimed by the seventh defendant. The seventh defendant had successfully demonstrated the amount of financial loss it incurred in terms of the redemption sum when the sixth defendant's title to the property became defeasible and the seventh defendant's rights as the chargee bank had effectively been extinguished. As such, this court allowed the seventh defendant's damages against the first and second defendants in the sum of RM1,903,916. Upon issuance by the seventh defendant of the current and updated redemption statement, the seventh defendant shall be entitled to and allowed an adjustment in the ultimate sum payable and in this case, the award under this heading shall be varied accordingly. (paras 58-60)

Case(s) referred to:

ACES System Development Pte Ltd v. Yenty Lily (Trading As Access International Services) [2013] 4 SLR 1317 ***(refd)***

Amm Joy (Suing As Chairman Committee Members Of Wat Boonyaram) v. Chuan Seng Sdn Bhd [2018] 1 LNS 474 CA ***(refd)***

Amsiah Rahim v. Borneo Samudera Sdn Bhd [2021] 4 CLJ 658 HC ***(refd)***

Aviation Development Corporation (M) Sdn Bhd v. Yayasan Selangor [2022] 4 CLJ 165 FC ***(refd)***

Chong Nge Wei & Ors v. Kemajuan Masteron Sdn Bhd [2022] 4 CLJ 833 FC ***(refd)***

Inverugie Investments Ltd v. Hackett [1995] 1 WLR 713 ***(refd)***

Majuikan Sdn Bhd v. Barclays Bank Plc [2014] 9 CLJ 337 CA ***(refd)***

Ministry Of Defence v. Ashman [1993] 66 P & CR 195 ***(refd)***

Ng Hee Thoong & Anor v. Public Bank Bhd [1995] 1 CLJ 609 CA ***(refd)***

Othman Ali & Ors v. Bukit Lenang Development Sdn Bhd [2016] 6 CLJ 508 CA ***(refd)***

Penarth Dock Engineering Co Ltd v. Pounds [1963] 1 Lloyd's Rep 359 ***(refd)***

Popular Industries Ltd v. The Eastern Garment Manufacturing Co Sdn Bhd [1990] 1 CLJ 133; [1990] 2 CLJ (Rep) 635 HC ***(refd)***

Stoke-On-Trent City Council v. W & J Wass Ltd [1988] 3 All ER 394 ***(refd)***

Strand Electric And Engineering Co Ltd v. Brisford Entertainments Ltd [1952] 2 QB 246 ***(refd)***

Strange And Others v. Westbury Homes (Holdings) Ltd And Another [2009] EWCA Civ 1247 ***(refd)***

Swordheath Properties Ltd v. Tabet [1979] 1 WLR 285 ***(refd)***

Villa Putra Management Corporation v. Mayland View Sdn Bhd [2014] 1 LNS 1096 HC ***(refd)***

WM Cory & Son Ltd v. Wingate Investments (London Colney) Ltd [1981] 17 BLR 104 ***(refd)***

Yayasan Selangor v. Aviation Development Corporation (M) Sdn Bhd [2020] 7 CLJ 529 CA ***(refd)***

A *For the plaintiff - Michelle Chew Ai Phin & Tan Jee Tjun; M/s Thomas Philip*
For the 1st & 2nd defendants - Nor Azlin Mohamad Yusoff; FC
For the 6th defendant - Marcus Lee Emily & Wong Li Yan; M/s Dennis Nik & Wong
For the 7th defendant - Yunis Arliza; M/s Shaikh David & Co

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JUDGMENT

Ahmad Shahrir Mohd Salleh J:

Introduction

C **[1]** This is an assessment of damages against the first and second defendants arising out of the decision of the High Court in allowing the plaintiffs' claim and as varied by the Court of Appeal.

[2] As varied by the Court of Appeal, the assessment of damages has been ordered in respect of all losses incurred by the plaintiff, the sixth defendant
D and the seventh defendant instead of limited to actual cost and expenses incurred as originally ordered by the High Court.

[3] By consent of all parties before the initial High Court Judge, the assessment proceeded by way of affidavit evidence. The first and second defendants conceded and had no rebuttal against the submissions of the
E plaintiffs, the sixth defendant and the seventh defendant. The seventh defendant's claim for losses based on the financing it provided for the purchase of the Mesui Property was not in dispute by the parties. The crux of the contentions was between the plaintiffs and the sixth defendant whereas in submissions, the learned Federal Counsel for the first and second
F defendants did not put up any significant challenge except for citing the relevant legal principles.

Brief Matrix Of Facts

[4] Based on submissions of parties, it has been established that the
G plaintiffs and the eighth defendant are beneficiaries entitled to receive benefits from the estate of Ng Cheong Choy who has passed away. This entitlement arises from the last will and testament of the deceased dated 15 March 2007. After the death of the deceased, the eighth defendant was appointed, the sole executor and trustee of the estate. Subsequently, on
H 2 August 2013, the grant of probate was issued to the eighth defendant.

[5] The deceased owned the "Mesui property" in Bukit Bintang, Kuala Lumpur which measured 383.956 square metres and this property was part of the deceased's estate.

[6] The basis of the plaintiffs' claim was fraud. The third defendant
I committed fraud resulting in the sale of the Mesui Property to the sixth defendant. The sixth defendant obtained the transfer on 28 February 2011. The sixth defendant then used the property as collateral to secure financing from the seventh defendant.

[7] The plaintiffs found out about the fraudulent sale of the Mesui property and took legal action against the defendants. They sought the following remedies:

(i) a declaration that the Mesui property constituted part of the estate of the deceased,

(ii) a declaration that the duplicate issue document of title of the Mesui Property in the possession of the sixth or seventh defendant was null and void,

(iii) an order that the duplicate issue document of title in the possession of the sixth or seventh defendant be cancelled,

(iv) an order that all documents and records of the first defendant be rectified to reflect that the Mesui property continued to be registered in the name of the deceased,

(v) an order for the sixth defendant to deliver vacant possession of the Mesui property,

(vi) an order that the sixth defendant to account for all profits made as a result of the occupation of the Mesui property from 28 February 2011 of such other date that the Honourable Court deems fit until the date of delivery of vacant possession and a declaration that such profits shall constitute part of the estate of the deceased,

(vii) alternatively, an order for damages be made against the first to the fifth defendants and a declaration that all such damages shall constitute part of the estate of the deceased.

[8] On 19 February 2016, the High Court gave judgment in favour of the plaintiffs and made the following orders:

(i) that the Mesui property formed part of the estate of the deceased and that the plaintiffs and the eighth defendant are entitled pursuant to the will,

(ii) that the duplicate issue document of title of the Mesui property which was in possession of the sixth or seventh defendant was null and void and was not the original document of title for the Mesui property,

(iii) that the first defendant rectifies all documents and records to show that the Mesui property was restored under the name of the deceased,

(iv) that the sixth defendant delivers vacant possession of the Mesui Property to the plaintiffs,

(v) that damages be assessed against the first and second defendants in relation to the cost and expenditure incurred by the sixth and seventh defendants.

[9] The sixth defendant was not satisfied with the decision of the High Court and appealed to the Court of Appeal. The plaintiffs also filed a cross-appeal because they were not satisfied with the decision. The basis for their cross-appeal was:

(i) that the High Court should have allowed the plaintiffs to recover all the rentals received by the sixth defendant,

(ii) that the sixth defendant was not a *bona fide* purchaser, and

(iii) that the value of the Mesui property should have been assessed at the date of judgment rather than the date of acquisition.

[10] On 24 August 2020, the Court of Appeal dismissed the sixth defendant's appeal. However, the plaintiffs' cross-appeal was partially allowed which resulted in certain parts of the High Court's order being varied and set aside effectively as follows:

(i) the order of the High Court that limits the assessment of damages to the actual expenses and costs incurred by the sixth and seventh defendants during the acquisition of the Mesui property from the third defendant including the purchase price and related incidental expenses has been set aside,

(ii) the order of the High Court was varied such that assessment of damages against the first and second defendants shall encompass all damages suffered by the sixth defendant, the plaintiffs and the seventh defendant.

Analysis And Findings

[11] The premise of the present assessment of damages is the decision made by the High Court and as varied by the Court of Appeal on 24 August 2020. It requires an assessment of all damages suffered by:

(i) the sixth defendant,

(ii) the plaintiffs, and

(iii) the seventh defendant.

[12] It is pertinent to observe at the onset that the first and second defendants effectively had no rebuttal to the damages claimed by the sixth defendant, the plaintiffs and the seventh defendant under each heading. In the affidavit in reply, the first and second defendants simply refuted their involvement in the incident and asserted that they were solely fulfilling their obligations in accordance with the provisions outlined in the National Land Code. To my mind, these issues pertain to the issue of liability which has already been conclusively decided and are not relevant facts in the assessment of damages.

[13] I am mindful of the established principle that the burden lies with the party seeking damages to demonstrate both the fact of the loss and the amount of the damages being sought. (See: *Aviation Development Corporation (M) Sdn Bhd v. Yayasan Selangor* [2022] 4 CLJ 165 FC; [2022] 3 MLJ 89; [2022] 4 MLRA 1; [2022] 3 AMR 401). If that party is unable to discharge this burden, then his claim must fail. (See: *Popular Industries Ltd v. The Eastern Garment Manufacturing Co Sdn Bhd* [1990] 1 CLJ 133; [1990] 2 CLJ (Rep) 635; [1989] 3 MLJ 360; [1989] 2 MLRH 705).

[14] The law in respect of proof of special damages is trite. It is well-established that the party seeking damages must demonstrate both the fact and the quantum of damages. If either of these aspects is not proven, the court cannot award damages. In a situation where damage is proven but the quantum is not adequately demonstrated, the court will only award nominal damages. Additionally, if specific and accurate evidence is available, the party seeking damages must present it to establish the extent of the actual loss. This means that the most reliable evidence must be presented. The evidence presented must be clear and credible to accurately measure the loss with an acceptable degree of correctness and certainty.

[15] In *Yayasan Selangor v. Aviation Development Corporation (M) Sdn Bhd* [2020] 7 CLJ 529 CA; [2019] MLJU 650; [2020] 2 MLRA 376; [2019] AMEJ 0728, the Court of Appeal reiterates the principles on the required proof of special damages as follows:

> [32] The law with regard to proof of special damages is not controversial. It is trite that a party seeking damages has the burden of proving both the fact and the amount of damages. If neither is proved, damages cannot be awarded. If damage is shown but the amount is not sufficiently proved, only nominal damages will be awarded. It is also trite that where precise evidence is available, the party seeking damages must provide it to show the actual loss. In other words, the best evidence available must be produced. The evidence produced must therefore be reliable and accurate so that the loss can be quantified with reasonable precision and certainty (see *Popular Industries Ltd v. The Eastern Garment Manufacturing Co Sdn Bhd* [1990] 1 CLJ 133; [1990] 2 CLJ (Rep) 635; *Bekalan Sains P & C Sdn Bhd v. Bank Bumiputra Malaysia Bhd* [2011] 1 LNS 232; [2011] 5 MLJ 1; *Sony Electronics (M) Sdn Bhd v. Direct Interest Sdn Bhd* [2007] 1 CLJ 611; [2007] 2 MLJ 229 and *Wasal Construction Sdn Bhd v. Boh Huat Chan Timber Products Sdn Bhd* [2013] 1 LNS 1269; [2014] 4 MLJ 294).

Damages For The Plaintiffs

Loss Of Enjoyment And/Or Usage Of The Mesui Property

[16] Under this head of damages, the plaintiffs claimed that they had suffered losses amounting to RM2,517,278.86. This sum corresponds to the income that could have been earned by the deceased's estate had the Mesui

Property been rented to third parties. According to the plaintiffs, the computation of these losses was determined using the rental charges provided in the table below which correspond to the specific time intervals mentioned:

(i) RM440,000 being the total rental received by the sixth defendant from 1 May 2011 to 30 April 2014 from its tenant, HMH Retail Sdn Bhd pursuant to the tenancy agreement dated 1 May 2011,

(ii) RM591,478.86 being the total rent received by the sixth defendant from 8 May 2012 to 7 May 2015 from its tenant, SMBE Concept Sdn Bhd pursuant to the tenancy agreement dated 6 June 2012,

(iii) RM511,800 being the total rent received by the sixth defendant from the month of August 2013 to the month of April 2015 from its tenant, JV Universal Sdn Bhd pursuant to the tenancy agreement dated 4 September 2013,

(iv) RM104,000 being the total rent received by the sixth defendant from the month of February 2018 to the month of May 2018 from its tenant, Jasa Hidayah Sdn Bhd pursuant to the tenancy agreement dated 5 January 2018,

(v) RM270,000 being the reasonable rental for nine months between the month of May 2015 and the month of January 2016 at the rate of RM30,000 per month based on the rate of rental paid by JV Universal Sdn Bhd for the month of April 2015,

(vi) RM210,000 being the balance of rental proceeds collected by the sixth defendant for the period between 19 February 2016 up to 31 October 2016 after deducting the sum of RM491,379.25 already paid to the plaintiffs by the sixth defendant. This arose out of the consent order dated 29 June 2016 whereby an undertaking to that effect was given by the director of the sixth defendant,

(vii) RM390,000 being the reasonable rental for 15 months between the month of June 2018 and 24 August 2020 at the rate of RM26,000 per month based on the rate of rental paid by Jasa Hidayah Sdn Bhd for the month of April 2015.

[17] According to learned counsel for the sixth defendant, the plaintiffs were not entitled to claim for all rentals collected by the sixth defendant from March 2011 to the date of the High Court's judgment. This was premised on the reason that the High Court did not order the sixth defendant to account for the profits made during that period and that the sixth defendant was not occupying the property without lawful basis.

[18] On the other hand, learned counsel for the plaintiffs argued that *restitutio in integrum* should apply in that the measure of damages for loss of use or enjoyment of the Mesui Property must be based on the gains obtained

by the sixth defendant out of the use of the property. Learned counsel for the plaintiffs' relied, amongst others, on the case of *Villa Putra Management Corporation v. Mayland View Sdn Bhd* [2014] 1 LNS 1096; [2015] 9 MLJ 779.

User Principle

[19] It is said that the concept of the 'user principle' was initially introduced by Denning LJ in the English Court of Appeal case of *Strand Electric and Engineering Co Ltd v. Brisford Entertainments Ltd* [1952] 2 QB 246. However, some argue that in *Strand Electric*, Romer LJ and Somervell LJ had referred to the 'compensation principle' instead. The user principle is said to be founded on the concept of restitutionary damages. This type of damages involves the disgorgement of the benefits obtained by the wrongdoer as distinguished from compensating the plaintiff for his loss. The basis for this is the notion that the plaintiff may not have sufficient evidence to demonstrate his losses under the compensation principle. It has been regarded as an exception to the compensation principle when the plaintiff is unable to obtain damages pursuant to that principle (See: *ACES System Development Pte Ltd v. Yenty Lily (Trading As Access International Services)* [2013] 4 SLR 1317), perhaps as a result of lapse of time since the wrongful occupation or detention of the property by the defendant.

[20] In *Strand Electric* (*supra*), the defendant was in talks to sell a theatre to Bedford Theatre (London) Ltd ("Bedford Theatre"). In the negotiation, Bedford Theatre was allowed to take possession of the property before the sale was finalised. The plaintiff lent portable switchboards to Bedford Theatre while it manufactured permanent ones. At first, the plaintiff did not charge Bedford Theatre for the portable switchboards. Later, when Bedford Theatre wanted to keep the portable switchboards and did not take delivery of the permanent ones, it agreed to pay weekly charges to the plaintiff. Shortly after, the defendant took possession of the theatre and instructed that nothing should be removed. The plaintiff wrote to the defendant requesting for the return of its equipment but did not receive a satisfactory reply. The plaintiff then sued the defendant for the return of the equipment and damages for the period the equipment was in the defendant's possession.

[21] His Lordship Denning LJ in his judgment ruled, amongst others, that in situations where the defendant has gained an advantage through his wrongful actions, he may be held responsible for it even if the plaintiff has not suffered any loss or damage. In a separate judgment, His Lordship said this:

> In assessing damages, whether for a breach of contract or for a tort, the general rule is that the plaintiff recovers the loss he has suffered, no more and no less. This rule is, however, often departed from. Thus in cases where the damage claimed is too remote in law the plaintiff recovers less than his real loss: *Liesbosch Dredger (Owners) v. Edison S.S. (Owners)*. In other

A cases the plaintiff may get more than his real loss. Thus, where the damage suffered by the plaintiff is recouped or lessened owing to some reason with which the defendant is not concerned, the plaintiff gets full damages without any deduction on that account: *Slater v. Hoyle & Smith Ld.; Smiley v. Townshend; Haviland v. Long. Again, in cases where the defendant has obtained a benefit from his wrongdoing he is often made liable to account for*
B *it, even though the plaintiff has lost nothing and suffered no damage: Reading v. Attorney-General.* (emphasis added)

[22] In *Penarth Dock Engineering Co Ltd v. Pounds* [1963] 1 Lloyd's Rep 359, the plaintiff agreed to sell to the defendant a floating pontoon. This pontoon was situated on a portion of the dock premises that the plaintiff had rented.
C Although the defendant had verbally agreed to promptly remove the floating pontoon, it did not follow through. As a result, the plaintiff took legal action against the defendant for trespass and sought compensation for the damages caused. Lord Denning MR ruled that although the plaintiff suffered no loss, the measure of damages was what the defendant has gained by the unlawful
D use of the property.

[23] Her Ladyship SM Komathy JC (now HCJ) in *Villa Putra*'s (*supra*) case having considered the English cases of *Stoke-On-Trent City Council v. W & J Wass Ltd* [1988] 3 All ER 394, *Swordheath Properties Ltd v. Tabet* [1979] 1 WLR 285, *Ministry of Defence v. Ashman* [1993] 66 P & CR 195, *Inverugie*
E *Investments Ltd v. Hackett* [1995] 1 WLR 713 and *Penarth Dock Engineering Co Ltd v. Pounds* [1963] 1 Llyod's Rep 359 made the following observations:

> [26] The cases quoted above illustrate that in trespass, a plaintiff can claim for either loss of use of his land or the profit the defendant has made by using his land. A claim for market rent for loss of use pursuant to the
> F user principle is on the basis of the amount that the plaintiff would have obtained if he had let the property. A plaintiff seeking market rent does not have to show that he would actually have let the premises in the relevant period; if he would not have let the property he is, in fact seeking restitution of the defendant's unjust enrichment arising from the benefit the defendant had obtained by having use of the property. He would
> G likewise be seeking restitution of the defendant's unjust enrichment if he sought to claim the profits which the defendant actually made. The measure of damages is therefore not what the plaintiff has lost, but the benefit or gain the defendant has obtained by having use of the property. See *Penarth Dock Engineering Co Ltd v. Pounds* [1963] 1 Lloyd's Rep 359.

H **[24]** Without delving into the matter of whether the award is intended to compensate or to restitute, the Court of Appeal in *Amm Joy (Suing As Chairman Committee Members Of Wat Boonyaram) v. Chuan Seng Sdn Bhd* [2018] 1 LNS 474 CA; [2018] 5 MLJ 255, had alluded to the 'user principle' as echoed in the case of *Othman Ali & Ors v. Bukit Lenang Development Sdn*
I *Bhd* [2016] 6 CLJ 508 CA; [2016] 3 MLJ 708. In *Amm Joy*, the Court of Appeal upheld the applicability of the user principle and ruled that "the

appellant must pay damages for its improper use of the respondent's land or for the use which the appellant has enjoyed" as "disgorgement of profits" (see: as per Celestina Stuel Galid J in *Amsiah Rahim v. Borneo Samudera Sdn Bhd* [2021] 4 CLJ 658; [2021] MLJU 479).

[25] It is pertinent to note that the plaintiffs' claim in the present case was a claim for restitution by the sixth defendant of the profits it made from use of the property. This can be clearly seen from prayer 25(g) of the amended statement of claim. In its original language, it is reproduced *in verbatim* as follows:

> 25. Oleh itu Plaintif-Plaintif memohon relif seperti berikut:
>
> (a) Untuk satu Perintah bahawa Defendan ke-6 akan bertanggungjawab keatas semua keuntungan yang dibuat akibat daripada pendudukan Harta tak alih yang dipegang dibawah Geran 33639, Lot 715, Seksyen 0057, Bandar Kuala Lumpur, Daerah Kuala Lumpur dari 28.02.2011 atau tarikh lain yang difikirkan sesuai oleh Mahkamah Yang Mulia ini sehingga penyerahan milikan kosong Harta tak alih tersebut dan satu pengisytiharan bahawa keuntungan tersebut hendaklah dijadikan sebahagian daripada Estet Ng Cheong Choy (No. K/P Lama: 2162982; No. K/P Baru: 171201-08-5001) (Simati).

[26] During its tenure of the property, it is an undeniable fact that the sixth defendant had gained rental payments as follows:

(i) RM440,000 total rental received from HMH Retail Sdn Bhd for the periods between 1 May 2011 and 30 April 2014 pursuant to the tenancy agreement dated 1 May 2011,

(ii) RM591,478.86 total rental received from SMBE Concept Sdn Bhd for the periods between 8 May 2012 and 7 May 2015 pursuant to the tenancy agreement dated 6 June 2012,

(iii) RM511,800 total rental received from JV Universal Sdn Bhd for the periods between month of August 2013 and the month of April 2015 pursuant to the tenancy agreement dated 4 September 2013,

(iv) RM104,000 total rental received from Jasa Hidayah Sdn Bhd for the periods between the month of February 2018 and the month of May 2018 pursuant to the tenancy agreement dated 5 January 2018.

[27] The sixth defendant had incurred expenses including payment of taxes in renting out the property for the following:

(i) building fire insurance,

(ii) cleaning works,

(iii) sewerage charges,

(iv) quit rent and assessment, and

(v) tax liabilities levied by the Inland Revenue Board.

[28] Since it was the plaintiffs' pleaded case that they are claiming for the sixth defendant to account for all the profits made in the occupation of the property and the plaintiffs' claim was allowed on that score, damages should accordingly be assessed on restitutionary basis premised on the user principle. The measure of damages which the plaintiffs should be entitled to must be gauged based on the gains in rental payments received by the sixth defendant less any expenses incurred in the same regard as disgorgement of profits. The rental payments that the sixth defendant received were in accordance with the descriptions provided in paras. [27](i), (ii), (iii) and (iv) above whereas the expenses including taxes expended by the sixth defendant were as described in paras. [28](i), (ii), (iii), (iv) and (v) above.

[29] The property was registered under the name of the sixth defendant on 28 February 2011. The High Court gave judgment in favour of the plaintiffs on 19 February 2016. The Court of Appeal dismissed the sixth defendant's appeal and partly allowed the plaintiffs' cross-appeal on 24 August 2020 and varied the order of the High Court.

[30] Approximately four months following the decision of the High Court, the plaintiffs and the sixth defendant agreed to a consent order. As per the consent order, the director of the sixth defendant undertook to pay to the plaintiffs all rental income collected between the date of the decision of the High Court and the conclusion of the month of October 2016 as well as any subsequent rental proceeds until the Court of Appeal decision.

[31] The rental payments collected for the property were paid to the sixth defendant's former solicitors, Messrs Americk Sidhu, as stakeholders. I find that the total rental payments collected and paid to Messrs Americk Sidhu pursuant to the consent order amounted to RM571,379.25 instead of RM491,379.25 as claimed by the plaintiffs. This was evidenced by the following cheques:

(i) RM251,379.25 *vide* Hong Leong Bank Berhad Cheque No. 290554 dated 19 October 2016,

(ii) RM120,000 *vide* Hong Leong Bank Berhad Cheque No. 291665 dated 28 February 2017,

(iii) RM30,000 *vide* Hong Leong Bank Berhad Cheque No. 292775 dated 11 May 2017,

(iv) RM30,000 *vide* Hong Leong Bank Berhad Cheque No. 292807 dated 21 June 2017,

(v) RM30,000 *vide* Hong Leong Bank Berhad Cheque No. 292838 dated 24 July 2017,

(vi) RM30,000 *vide* Hong Leong Bank Berhad Cheque No. 295002 dated 15 December 2017, and

(vii) RM80,000 *vide* Public Bank Berhad Cheque No. 204630 dated 9 May 2019.

[32] The property was vacant from the month of January 2020 until the Court of Appeal delivered its decision. There were no rentals collected. As of the date of assessment, the total sum of rental proceeds received by the sixth defendant which is payable to the plaintiffs after deducting the total expenses including taxes as gathered from the sixth defendant's affidavit are as follows:

(i) RM249,619.17 total rental proceeds less expenses for the year 2016,

(ii) RM290,381.76 total rental proceeds less expenses for the year 2017,

(iii) RM99,868.29 total rental proceeds less expenses for the year 2018,

(iv) RM174,890.45 total rental proceeds less expenses for the year 2019,

(v) (RM5,465.62) total expenses for the year 2020,

(vi) (RM1,767) total expenses for the year 2021.

[33] After considering the amount already paid to Messrs Americk Sidhu, the total sum of rental proceeds between the year 2016 to 2019 and the total expenses including taxes, the balance amount of rental proceeds which was payable by the sixth defendant to the plaintiffs was assessed at RM236,147.80.

[34] The plaintiffs' claims for the following amounts were based on reasonable rental:

(i) RM270,000 for nine months' rental for the period between the month of May 2015 and the month of January 2016 at the monthly rental of RM30,000 based on the rate of monthly rental paid by JV Universal Sdn Bhd for the month of April 2015,

(ii) RM390,000 for 15 months' rental for the period between the month of June 2018 and 24 August 2020 at the monthly rental of RM26,000 based on the rate of rental paid by Jasa Hidayah Sdn Bhd for the month of April 2015.

[35] It is evident that these claims for reasonable rental were not founded on the proceeds in rental obtained by the sixth defendant during those periods nor did the plaintiffs adduce any evidence to support these claims in rental proceeds. On the contrary, learned counsel for the plaintiffs clearly stated that these rental claims were determined based on the prevailing rate of reasonable rent for other rental agreements. Given the circumstances, I am constrained not to allow these claims.

Restoration Of The Mesui Property

[36] The plaintiffs claimed for the sum of RM65,100 as the cost to restore the Mesui Property to a tenantable condition. Learned counsel for the sixth defendant by his own written submissions conceded that since the judgment of the High Court, the sixth defendant was no longer responsible for the property or its security.

[37] The photographs presented in the plaintiffs' affidavit unequivocally demonstrated that the property was in a dilapidated condition and required repair and restoration work to make it habitable for prospective tenants. A quotation was produced by the plaintiffs in the affidavit in support of the claim.

[38] In *Chong Nge Wei & Ors v. Kemajuan Masteron Sdn Bhd* [2022] 4 CLJ 833 FC; [2022] 3 MLJ 135, the Federal Court expressed the view that a quotation can serve as *prima facie* evidence of the cost that would need to be incurred for remedial work. In delivering the decision of the apex court, His Lordship Abdul Rahman Sebli FCJ (now CJSS) considered the cases of *WM Cory & Son Ltd v. Wingate Investments (London Colney) Ltd* [1981] 17 BLR 104 and *Strange And Others v. Westbury Homes (Holdings) Ltd And Another* [2009] EWCA Civ 1247 and said as follows:

> [58] The relevance of the two cases to the present appeal is that although no remedial works had been carried out by the claimants to rectify the defects in the works, damages were awarded to them. This answers the Court of Appeal's view that actual works must first be carried out and actual expenses must first be incurred before the appellants could claim for damages. In *WM. Cory & Son Ltd*, the plaintiffs were held to be entitled to an award of damages "which will meet the costs" of the remedial works whilst in *Strange and others*, damages were awarded based on the quotations produced by the claimant.
>
> [59] Applying the principles in the two cases to the facts of the present case, the appellants were *prima facie* entitled to the cost of replacing the flexcore with autoclaved aerated concrete building block as would put them in a position to have the building material they contracted for, and the quotation provided *prima facie* proof of the sum "which will meet the costs" of the remedial works, which includes dismantling of the existing walls.

[39] In my considered opinion, the appropriate compensation for the plaintiffs would be the amount required to restore the property to a habitable state. Referring to the precedent in *Chong Nge Wei* (*supra*), this court has determined that the quotation can be accepted as *prima facie* evidence of the estimated cost to be borne by the plaintiffs which is RM65,100. Consequently, I hereby allowed damages in the sum of RM65,100 to the plaintiffs against the first and second defendants to cover the expenses of restoring the property to a tenantable condition.

Outstanding Utility Charges

[40] The plaintiffs claimed for the sum of RM90,761.99 being the outstanding electricity charges levied by Tenaga Nasional Berhad ("TNB") in relation to the property which remained outstanding. The TNB bills exhibited by the plaintiffs served as evidence that these charges were accumulated during the period in which the sixth defendant occupied the property.

[41] In my considered opinion, this claim for unpaid utility charges was intrinsically linked to the sixth defendant's utilisation of the property and its receipt of rental income from it. The outstanding utility charges were not deducted from the rental proceeds and therefore should be the responsibility of the sixth defendant. Consequently, I allowed the plaintiffs' claim for damages against the sixth defendant for the total amount of RM90,761.99 under this heading.

Valuation Fees

[42] The plaintiffs claimed for the sum of RM16,000 as valuation fees on the property. To evidence this claim, the plaintiffs exhibited a tax invoice issued by JS Valuers Property Consultants Sdn Bhd dated 14 May 2015 addressed to Messrs Americk Sidhu. In this tax invoice, the total sum of RM16,000 was stated as the valuation fee, disbursements and the 6% goods and services tax.

[43] It is worth noting that a part payment of RM9,000 was specified as having been made for the tax invoice through Malayan Banking Berhad Cheque No. 248287 dated 27 April 2015, possibly as a prepayment. However, at the time of the assessment which was nearly seven years later, there was no evidence to confirm that the plaintiffs had paid the remaining amount that was specified in the tax invoice. Given the absence of evidence indicating that the plaintiffs paid the balance sum of the tax invoice, I am inclined to allow the plaintiffs' claim against the sixth defendant for the amount of RM9,000 for the valuation fees.

Legal Fees

[44] According to the plaintiffs, they incurred legal fees in seeking legal redress on behalf of the estate against the defendants pertaining to the fraud in the sale and negligence in the transfer of the Mesui Property. The plaintiffs claimed that they had expended a total of RM962,539.06 on legal fees to defray the legal expenses of the trial before the High Court and the appeal before the Court of Appeal.

[45] The plaintiffs exhibited the bills issued by Messrs. Americk Sidhu between April 2012 and September 2020 which consisted of professional fees, disbursements and GST. It is to be noted that there was a total of ten professional bills exhibited for the total amount of RM962,539.06 out of

which six of them were pro forma invoices. Out of the total sum, the plaintiffs were able to show payment of three bills amounting to RM144,749.60, namely the following bills:

(i) Bill No. 0019 dated 4 April 2012 for the sum of RM33,529.60;

(ii) Bill No. 0046 dated 20 May 2013 for the sum of RM53,000; and

(iii) Bill No. 0090 dated 18 August 2014 for the sum of RM58,220.

[46] In the circumstances, I am inclined to allow the plaintiffs the total sum of RM144,749.60 as damages against the first and second defendants being the legal fees incurred arising out of the negligence of the first and second defendants.

Damages For The Sixth Defendant

[47] The sixth defendant claimed damages against the first and second defendants for all losses suffered as a result of their negligence for the following items:

(i) RM99,000 being the payment made towards the stamp duty charged on the memorandum of transfer (Form 14A),

(ii) RM5,000 being the legal fees paid for the preparation of the sale and purchase agreement,

(iii) RM14,250 being the payment made towards the stamp duty charged on the facilities agreement,

(iv) RM23,248.40 being the legal fees paid for the preparation of the loan and the charge documents in favour of the seventh defendant as the chargee bank,

(v) RM255,163 being the cost incurred to restore and refurbish the property into a habitable and tenantable state after its acquisition,

(vi) RM1,903,916 being the redemption sum payable to the seventh defendant as of the redemption statement dated 28 February 2021,

(vii) RM13,074.93 being the premium paid for insuring the property,

(viii) RM19,148 being the assessment rates paid in respect of the property,

(ix) RM16,169 being the quit rent paid in respect of the property,

(x) RM484,460 being the legal fees and cost paid to the solicitors and counsel for the sixth defendant,

(xi) RM11,200,000 being the market value of the property for loss of ownership of the property,

(xii) RM2,138,755.71 being the total payment made to the seventh defendant towards the principal loan sum and interest as at December 2020, and

(xiii) RM1,903,916 being the redemption sum as at 28 February 2021 payable by the sixth defendant to the seventh defendant.

[48] During oral submissions, the learned Federal Counsel affirmatively conceded to the damages claimed. In this regard, the principles in *Ng Hee Thoong & Anor v. Public Bank Bhd* [1995] 1 CLJ 609 CA; [1995] 1 MLJ 281; [1995] 1 MLRA 48; [1995] 1 AMR 622 applies. Failure of the first and second defendants to contradict the positive assertions made will be treated as an admission of the facts so asserted.

[49] In respect of the damages mentioned below, it is the finding of this court that the sixth defendant has provided sufficient evidence to prove its losses. Since the first and second defendants did not dispute the evidence, I made the following award of damages to the sixth defendant:

(i) RM99,000 for payment of stamp duty charged on the memorandum of transfer (Form 14A),

(ii) RM5,000 for legal fees paid for the preparation of the sale and purchase agreement,

(iii) RM14,250 for payment of stamp duty charged on the facilities agreement,

(iv) RM23,248.40 for legal fees paid for the preparation of the loan and charge documents in favour of the seventh defendant as the chargee bank,

(v) RM13,074.93 for insurance premium paid,

(vi) RM19,148 for assessment rates paid,

(vii) RM16,169 for quit rent paid,

(viii) RM484,460 for legal fees and cost paid to the solicitors and counsel for the sixth defendant, and

(ix) RM2,138,755.71 for total payment made to the seventh defendant towards the principal loan sum and interest as at December 2020.

[50] Even though the first and second defendants did not refute the quantum of damages claimed by the sixth defendant, the burden of proving the losses incurred still lay on the sixth defendant. Regarding the sixth defendant's claim for damages totalling RM255,163 as the total cost incurred for repairing and improving the property after acquiring it, it is the finding of this court that only the sum of RM82,830 was shown to have been paid. As such, I awarded the sixth defendant the sum of RM82,830 under this head of damages.

Market Value Of The Property

[51] The sixth defendant claimed against the first and second defendants for the sum of RM11,200,000 as the market value of the property as of the date the High Court decided that the sixth defendant's title was defeasible. The sixth defendant produced a valuation report dated 16 October 2020 prepared by Messrs AFZ Realty Sdn Bhd.

[52] After inspecting the property and investigating the relevant information, the valuers concluded that the fair market value of the property as of 19 February 2016 was RM11,200,000 on the basis of "willing buyer and willing seller" in an arm's length transaction. The valuers employed the cost and comparison method by considering recent transactions to determine the market value of the property. The valuers made adjustments for variations in factors like location, time element, land size, market condition and other elements that could have an impact on the property's value.

[53] There was no rebuttal report by the first and second defendants. Since the assessment was proceeded with by means of an exchange of affidavits, this court did not have the benefit of any challenge in cross-examination of the valuers in terms of facts and opinions expressed in the valuation report.

[54] It is well-established that a judge who is not an expert in a particular field should give deference to the opinions of experts unless those opinions are clearly and obviously unreasonable and are not supported by the facts of the case. If there are opposing expert opinions, a judge can use his own judgment to decide which opinion to follow. However, when there is only one expert opinion, the judge should not simply dismiss it without careful consideration unless it is clearly indefensible and contradicts the basic facts of the case. The court has the ultimate authority to make a decision.

[55] In *Majuikan Sdn Bhd v. Barclays Bank PLC* [2014] 9 CLJ 337 CA; [2015] 1 MLJ 171, His Lordship Mohamad Ariff Yusof JCA delivering the decision of the Court of Appeal observed as follows:

> [35] We are in agreement with these principles and in our view, a judge who is not an expert himself, should defer to expert opinion unless that evidence is obviously indefensible and is not supported by the basic facts of the case. Where there are conflicting expert opinions, the judge is of course entitled to bring to bear his own judicial appreciation of the matter, and choose one over the other, but where there is only one expert opinion, he should not as a rule reject that opinion outright without judiciously considering whether it is obviously indefensible and unsupported by the basic facts of the case. Such a principle is in accord with the principle that the court is the final arbiter, as stated in *Dr Shanmuganathan v. Periasamy Sithambaram Pillai* [1997] 2 CLJ 153; [1997] 3 MLJ 61:

> ... the principal object of expert evidence is to assist the court to form its own opinion. An expert should give his reasons. The court is the final arbiter, not the experts or witnesses ... The learned Judge should have considered the reasoning given by the expert and with that assistance arrive at the conclusion. In failing to do so the learned Judge had abdicated his function. The learned Judge is entitled to reject the evidence but not before considering such evidence ...

[56] In the present assessment, it is the finding of this court that the valuation report was not obviously indefensible. In fact, the valuer's conclusion was amply supported by the basic facts. In the circumstances, I awarded the sixth defendant against the first and second defendants the sum of RM11,200,000 representing the market value of the property as at the date of the High Court's decision rendering the sixth defendant's title to the property as defeasible.

Redemption Sum Payable To The Seventh Defendant

[57] The sixth defendant and the seventh defendant have both claimed the same amount as the redemption sum. As per the concession between the parties, this court will consider this amount when assessing damages for the seventh defendant to enable the damages to be awarded directly to the seventh defendant.

Damages For The Seventh Defendant

[58] The seventh defendant has claimed damages for a total sum of RM1,903,916 as of 28 February 2021 and this amount will continue to accrue interest at the rate of 2.10% per annum below the BLR from 1 March 2021 until the full amount is paid. The damages claimed by the seventh defendant was for the outstanding amount of the financing it provided to the sixth defendant for the purchase of the Mesui Property.

[59] Again, the first and second defendants did not refute the quantum claimed by the seventh defendant. The statement of account exhibited by the seventh defendant showed that as of 28 February 2021 the amount outstanding under the term loan facility granted to the sixth defendant was RM1,903,916 together with continuing interest at the rate of 2.10% below the BLR calculated on a daily basis from 1 March 2021 until the date of full settlement.

[60] Based on the evidence presented, I find that the seventh defendant had successfully demonstrated the amount of financial loss it incurred in terms of the redemption sum when the sixth defendant's title to the property became defeasible and the seventh defendant's rights as the chargee bank had effectively been extinguished. As such, I allowed the seventh defendant damages against the first and second defendants in the sum of RM1,903,916

as of 28 February 2021 and continuing with interest at the rate of 2.10% per annum below the BLR from 1 March 2021 to the date of full payment. Since the redemption statement has not been updated as of the date of the assessment, upon issuance by the seventh defendant of the current and updated redemption statement, the seventh defendant shall be entitled to and allow an adjustment in the ultimate sum payable and in that case the award under this heading shall be varied accordingly.

Summary Of Damages Assessed

[61] In order to provide clarity, this court summarises the assessed damages as follows:

Damages Awarded To The Plaintiffs Against The Sixth Defendant

(i) for loss of enjoyment and/or usage of the Mesui Property, the damages awarded to the plaintiffs against the sixth defendant are assessed as follows:

(a) the sum of RM440,000 is awarded against the sixth defendant less any expenses incurred and paid as may be shown by the sixth defendant for the period between March 2011 and 19 February 2016 in respect of the tenancy agreement dated 1 May 2011 for HMH Retail Sdn Bhd. For this purpose, the expenses allowed shall be on the same basis as that for the rental income received by the sixth defendant for the period after 19 February 2016 up to May 2019,

(b) the sum of RM591,478.86 is awarded against the sixth defendant less any expenses incurred and paid as may be shown by the sixth defendant for the period between 8 May 2012 and 7 May 2015 in respect of the tenancy agreement dated 6 June 2012 for SMBE Concept Sdn Bhd. For this purpose, the expenses allowed shall be on the same basis as that for the rental income received by the sixth defendant for the period after 19 February 2016 up to May 2019,

(c) the sum of RM511,800 is awarded against the sixth defendant less any expenses incurred and paid as may be shown by the sixth defendant for the period between August 2013 and April 2015 in respect of the tenancy agreement dated 4 September 2013 for JV Universal Sdn Bhd. For this purpose, the expenses allowed shall be on the same basis as that for the rental income received by the sixth defendant for the period after 19 February 2016 up to May 2019,

(d) the sum of RM104,000 is awarded against the sixth defendant less any expenses incurred and paid as may be shown by the sixth defendant for the period between February 2018 and May

2018 in respect of the tenancy agreement dated 5 January 2018 for Jasa Hidayah Sdn Bhd. For this purpose, the expenses allowed shall be on the same basis as that for the rental income received by the sixth defendant for the period after 19 February 2016 up to May 2019,

(e) the sum of RM236,147.80 is awarded against the sixth defendant as the remaining balance of rental for the period after 19 February 2016 up to May 2019 after taking into account the rental paid to the plaintiff's former solicitors, Messrs Americk Sidhu pursuant to the consent order dated 29 June 2016,

(f) for the plaintiffs' claim for reasonable rental of RM270,000 for the period between May 2015 and January 2016 and reasonable rental of RM390,000 for the period between June 2018 and 24 August 2020, no damages are allowed,

(ii) for outstanding utility, the damages awarded to the plaintiffs against the sixth defendant is assessed at RM90,761.99,

(iii) for valuation fee, the damages awarded to the plaintiffs against the sixth defendant is assessed at RM9,000.

Damages Awarded To The Plaintiffs Against The First And Second Defendants

(iv) for restoration of the Mesui Property to a tenantable condition, the damages awarded to the plaintiffs against the first and second defendants is assessed at RM65,100,

(v) for legal fees, the damages awarded to the plaintiffs against the first and second defendants is assessed at RM144,749.60,

Damages Awarded To The Sixth Defendant Against The First And Second Defendants

(vi) in respect of market value of the property, the sixth defendant is awarded the sum of RM11,200,000 against the first and second defendants,

(vii) in respect of stamp duty paid for transfer, the sixth defendant is awarded the sum of RM99,000 against the first and second defendants,

(viii) in respect of legal fees for the sale and purchase agreement, the sixth defendant is awarded the sum of RM5,000 against the first and second defendants,

(ix) in respect of stamp duty for the facilities agreement, the sixth defendant is awarded the sum of RM14,250 against the first and second defendants,

(x) in respect of legal fees and cost for loan and charge document in favour of the seventh defendant, the sixth defendant is awarded the sum of RM23,248.40 against the first and second defendants,

(xi) in respect of cost of repairs and restoration of the property after acquisition, the sixth defendant is awarded the sum of RM82,830 against the first and second defendants,

(xii) in respect of the cost of the premium paid for fire insurance, the sixth defendant is awarded the sum of RM13,074.93 against the first and second defendants,

(xiii) in respect of assessment rates between July 2011 and July 2020, the sixth defendant is awarded the sum of RM19,148 against the first and second defendants,

(xiv) in respect of quit rent between the year 2012 and 2021, the sixth defendant is awarded the sum of RM16,169 against the first and second defendants,

(xv) in respect of legal fees in defending the plaintiffs' claim and the appeal before the Court of Appeal, the sixth defendant is awarded the sum of RM484,460 against the first and second defendants,

(xvi) in respect of repayment of the principal loan sum and interest made by the sixth defendant to the seventh defendant, the sixth defendant is awarded the sum of RM2,138,755.71 being repayments made as of December 2020 against the first and second defendants.

Damages Awarded To The Seventh Defendant Against The First And Second Defendants

(xvii) in respect of the redemption sum, the seventh defendant is awarded against the first and second defendants the sum of RM1,903,916 as of 28 February 2021 and accumulating interest at the rate of 2.10% per annum below the BLR from 1 March 2021 until the amount is paid in full is awarded. If the seventh defendant provides an updated redemption statement, it shall be entitled to make adjustments to the final payment by the first and second defendants and the award under this heading shall be revised accordingly.

[62] For the plaintiffs, the sixth defendant and the seventh defendant, I allow cost of RM3,000 each subject to allocatur to be paid by the first and second defendants. Judgment interest on all assessed damages is allowed at the rate of 5% per annum from the date of judgment to the date of full realisation.